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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA AT JUNEAU

**RECEIVED**

OCT 30 2006

MYRNA I. JOHNSON,

Plaintiff,

vs.

No. J-04-008-CV (RRB)

FRED MEYER STORES, INC., and

JAIME SAN MIGUEL,

Defendants.

VIDEOTAPED DEPOSITION OF MARY LUCAS HILL

Volume 2, Pages 55-107

Taken on behalf of Plaintiff

October 25, 2006

\* \* \*

ORIGINAL

*Johnson, Myrna v Fred Meyer Exhibit A 1 of 19*

**BEOVICH  
WALTER  
&  
FRIEND**

*Certified Court Reporters*

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1 question.

2 Go ahead.

3 Q. BY MR. CHOATE: Where the file was located that  
4 contained this information?

5 A. I would -- my guess is it was located out of the  
6 region office in Seattle.

7 Q. And why would it have been at the region office in  
8 Seattle as opposed to either in Juneau or in  
9 Portland?

10 A. Because at the time that I conducted this  
11 interview, my office was in Seattle.

12 Q. All right. Now, at the conclusion of your last  
13 deposition, did you direct anybody to the fact that  
14 there might be additional materials in regards to  
15 your investigation as to Mr. San Miguel in Seattle?

16 A. No.

17 Q. Okay. So when was the first time that you actually  
18 saw these documents that -- beyond when you were  
19 doing the investigation in 2003, when was the first  
20 time you saw these documents that are Exhibit 1?

21 A. Today.

22 Q. All right. So you hadn't seen them before?

23 A. Right.

24 Q. All right. Now, having reviewed them, I assume  
25 with your counsel and now as Exhibit 1, do you

*Johnson, Myrna v Fred Meyer Exhibit A 2 of 19*

1 Q. When you got this Office Vision, did you initiate  
2 any investigation in October of '02?

3 A. Yes, I did.

4 Q. Okay. What did you start doing?

5 A. Well, as I recall, one of the things I did ask  
6 Johnna to do was to provide me with specifics with  
7 regard to her complaint, and also I recall that I  
8 was dealing with or talking with the store director  
9 on a pretty regular basis with regard to issues in  
10 his store and asking him to talk to Mr. San Miguel  
11 to find out, you know, if Johnna was in fact being  
12 trained and what the issues were with her schedule.

13 Q. Now, those communications, those would have been in  
14 October of 2002?

15 A. Ongoing. Yes.

16 Q. Okay. And they would have been with the store  
17 manager?

18 A. That's correct.

19 Q. Was it your normal practice to memorialize, meaning  
20 write down, those communications in some fashion?

21 A. Not every phone call. No. And I typically would  
22 keep -- would have started a file, and any notes  
23 that I would have taken with regard to the issue  
24 would have gone into the file, an investigation

25 file.

*Johnson, Myrna v Fred Meyer Exhibit A 3 of 19*

1 Q. Okay. Now, looking at the materials that were  
2 provided to us by Fred Meyer, do you see any notes  
3 of any communications that you had with Mr. Sayre  
4 at any time regarding the investigation into  
5 Ms. Havard's complaints about Mr. San Miguel?

6 A. I don't.

7 Q. Would you have normally kept or written some formal  
8 notes in regard to those conversations?

9 A. Yes.

10 Q. Do you know where those are?

11 A. I don't.

12 Q. Do you have any recollection today of specifically  
13 talking to Mr. Sayre about Mr. San Miguel and  
14 Ms. Havard's complaints?

15 A. Yes.

16 Q. Okay. Do you recall how many conversations you had  
17 with Mr. Sayre?

18 A. I don't.

19 Q. Would it have been more than one?

20 A. Yes, it would have.

21 Q. Would it have been more than five?

22 A. It depends on what time frame you are talking  
23 about.

24 Q. What about from October of 2002 through January or  
25 February of 2003?

*Johnson, Myrna v Fred Meyer Exhibit A 4 of 19*

1 through what your investigation entailed.

2 A. Well, the conclusions based on my conversations  
3 with a number of people in that department were  
4 that Jaime was not working like he was scheduled to  
5 work, that he was coming in late on a pretty  
6 regular basis, and that there was a lot of  
7 confusion as to who was supposed to do what with  
8 regard to assignment of duties.

9 Q. Okay. And what was the -- why was there confusion?  
10 What did your investigation determine in that  
11 regard?

12 A. Well, the main complaint from the people that I  
13 spoke with that worked for him was that there was  
14 either no direction or a change of direction after  
15 direction was initially given and that he was  
16 missing from work on a pretty regular basis.

17 Q. Were there complaints about Mr. San Miguel -- any  
18 complaints of him kicking objects or kind of  
19 physically acting out?

20 A. My notes show that one of the people that I spoke  
21 with said that he -- they knew him to have a temper  
22 problem and that they cited a time in I think the  
23 warehouse or the freight -- where the freight was  
24 that they had witnessed him kick a box of freight.

25 Q. Now, in regards to these complaints, are they the  
*Johnson, Myrna v Fred Meyer Exhibit A 5 of 19*

1 normal sort of complaints that would have supposed  
2 to have gone to the store director?

3 A. Yes.

4 Q. Okay. And did you in your investigation find that  
5 this information had gone to the store director but  
6 Mr. Sayre had not acted upon or not responded to  
7 the complaints?

8 A. Either he had not responded to the complaint or had  
9 not followed up on addressing the complaints with  
10 Jaime.

11 Q. Okay. Now, did you ask Mr. Sayre what he had done  
12 in regards to these complaints?

13 A. Yes.

14 Q. Okay. And what did he tell you?

15 A. He indicated that he had addressed some of the  
16 issues with Jaime, but clearly from what the  
17 investigation showed was that, even if he had  
18 talked to him about it, it hadn't done any good.  
19 Jaime hadn't improved his attendance at all.

20 So it was a matter of not using the progressive  
21 discipline process to address an attendance issue  
22 with a manager.

23 Q. Did you talk to Mr. San Miguel directly about these  
24 complaints?

25 A. Yes.

1 Q. Okay. What was your conclusion in that regard?

2 A. I -- there was no -- I had no proof, no witnesses  
3 to Mr. San Miguel tearing up tours.

4 Q. Were there complaints regarding employee --  
5 inconsistencies in employee discipline by Mr. San  
6 Miguel?

7 A. You know, that part of it I don't recall as being  
8 that big of an issue.

9 Q. Okay. If you could turn to 202 -- Bates  
10 No. 202417.

11 A. Okay.

12 Q. Can you tell me whose handwriting this is?

13 A. That's mine.

14 Q. Okay. Real quickly, if we're looking at 202417,  
15 418, 419, and then 420, 421, 422, 423, 424, 425,  
16 426, 427, 428, 429, 430, 431, that Bates set, are  
17 those all your handwritten notes?

18 A. Yes.

19 Q. Are they all part of the investigation you  
20 conducted?

21 A. Yes.

22 Q. Okay. Did you meet with Mr. Sayre before these  
23 notes were taken or after, if you recall?

24 A. I don't recall. I really don't.

25 Q. Let me just ask, also. There is a page of  
*Johnson, Myrna v Fred Meyer Exhibit A 7 of 19*

1 MR. CHOATE: Let me rephrase that question. I  
2 think that's a good objection.

3 Q. BY MR. CHOATE: If a salaried employee is scheduled  
4 to come to work at seven in the morning and doesn't  
5 show and hasn't called in, what is the policy at  
6 Fred Meyer for dealing with the fact that the  
7 employee did not show and did not call in?

8 A. Well, the policy is that you attempt to make --  
9 whether you are hourly or salaried, you make an  
10 attempt to contact the person to find out where  
11 they are. If you are speaking to what the  
12 discipline is for --

13 Q. Yes. Why don't you tell me, what's the discipline  
14 for that?

15 A. If it's determined that there are no extenuating  
16 circumstances and they just plain chose not to come  
17 to work, typically you would for what they refer to  
18 as a no call/no show, for the first offense, it's a  
19 written warning. If it happens again, that's a  
20 termination offense.

21 Q. Okay. Now, what if the employee shows up two hours  
22 late? What is the discipline?

23 A. That's an attendance issue. You start with  
24 counseling, and if it continues, then you move to  
25 the next step of discipline, which would typically

*Johnson, Myrna v Fred Meyer Exhibit A 8 of 19*



1 A. I believe that they are asked to clock in once  
2 during the week, and that's for a time and  
3 attendance requirement.

4 Q. Okay. Otherwise, there would be no way for the  
5 store director to know whether a manager is showing  
6 up for their shift other than the store director  
7 following up on that, observing it?

8 A. Correct.

9 Q. If a manager -- managerial employee decides to  
10 leave early on the shift, is that also an  
11 attendance issue if they leave without giving  
12 notice?

13 A. Yes.

14 Q. Again, would be responded to by a series of  
15 progressive discipline?

16 A. Correct.

17 Q. Now, if a managerial employee leaves a job because  
18 of a personal issue, whether it's a medical problem  
19 or it's a kid daycare issue or some other reason,  
20 without explanation, would that normally be  
21 something which would be treated as an attendance  
22 problem with counseling being the first step in  
23 discipline?

24 A. That's correct.

25 Q. Did you determine in your investigation whether

*Johnson, Myrna v Fred Meyer Exhibit A 9 of 19*

1 A. As I recall, he was given a last and final warning.

2 Q. Okay. In your -- okay. If you could, then,  
3 explain to me where a last and final warning fits  
4 within the progressive discipline system you just  
5 discussed.

6 A. It's a written warning that says "last and final"  
7 at the top, and that means that we're not -- we  
8 won't do any more written warnings, we won't do any  
9 other discipline, that when you are given a last  
10 and final warning, if you violate the rule again,  
11 you can expect to be discharged.

12 Q. Now, in giving a last and final warning, had you  
13 concluded that Mr. San Miguel had already been  
14 given the series of progressive discipline steps  
15 before then, before that, or did you jump to that  
16 step?

17 A. We jumped to that step based on the fact that he  
18 had been counseled by the store director. But due  
19 to the fact he was department manager and we had  
20 found that it was a pretty serious attendance  
21 issue, we decided that he deserved to receive a  
22 last and final warning, and that he understood that  
23 he could not continue to miss time as he had  
24 previously.

25 Q. And the form that would have had the last and final

*Johnson, Myrna v Fred Meyer Exhibit A 10 of 19*

1 warning, it would say "last and final," like  
2 handwritten at the top of the written warning form?

3 A. That's correct.

4 Q. Okay. And do you recall issuing that?

5 A. Yes.

6 Q. And who would have signed off on that?

7 A. It would have been the regional vice-president and  
8 myself and Mr. San Miguel. And probably Fred as  
9 well.

10 Q. Now, in that same process or trip, did you reach  
11 certain conclusions regarding Mr. Sayre's  
12 management practices that resulted in some form of  
13 discipline for Mr. Sayre?

14 A. You know, I don't recall if we disciplined  
15 Mr. Sayre that trip.

16 Q. Did you discipline him at some other point?

17 A. I believe we did.

18 Q. And what -- if you recall, what was the discipline  
19 for?

20 A. For failing to address issues in his store.

21 Q. Including the one with Mr. San Miguel?

22 A. That's correct.

23 Q. Okay. Do you recall -- you've identified all of  
24 the handwritten documents as being in your own  
25 handwriting that are part of this Exhibit 1.

*Johnson, Myrna v Fred Meyer Exhibit A 11 of 19*

1 Ms. Havard?

2 A. Yes.

3 Q. And then documents stamped Nos. 202420 through  
4 202431, are those simply some of your handwritten  
5 notes based on interviews of different people at  
6 the Juneau store?

7 A. Yes.

8 Q. Can you tell us at this time if those handwritten  
9 notes were in person or over the telephone or based  
10 on interviews?

11 A. They were in person.

12 Q. So you were at the Juneau store?

13 A. Yes.

14 Q. Now, during the time that you had responsibility  
15 for the Juneau store as a human resources  
16 representative for Fred Meyer, that would have  
17 covered 2001, 2002 and part of 2003?

18 A. Correct.

19 Q. And for the salaried employees in the Juneau store  
20 during that time frame, what was their employment  
21 status?

22 A. They were at-will.

23 Q. And what do you understand employment at-will to  
24 be?

25 MR. CHOATE: I'm going to object to your  
*Johnson, Myrna v Fred Meyer Exhibit A 12 of 19*

Mary Hill

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1 you investigated.  
 2 **A. Yes.**  
 3 Q. Do you recall that now, saying that?  
 4 **A. Yes.**  
 5 Q. Okay. And at that time had you reviewed any  
 6 documents before going to your deposition in May of  
 7 2006?  
 8 **A. I'm sure I did.**  
 9 Q. Okay. Had you reviewed the documents that you  
 10 discussed today, the ones with the Office Vision?  
 11 Had you looked at those before your deposition in  
 12 May of 2006?  
 13 **A. I don't believe so. No.**  
 14 Q. Okay. Now, some documents were -- apparently you  
 15 did review some documents, and I'm going to have  
 16 the court reporter mark the document set that I  
 17 have sent to her as Exhibit 1 to the second volume  
 18 of your deposition, and I'm going to ask you,  
 19 Mrs. Hill, if these are the documents you reviewed  
 20 before coming to your deposition today?  
 21 **A. Okay.**  
 22 Q. Will you look at them real quickly.  
 23 MR. DICKENS: Counsel, they've not been handed  
 24 to her yet.  
 25 MR. CHOATE: I'm sorry. All right.

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1 (Marked Deposition Exhibit No. 1.)  
 2 Q. BY MR. CHOATE: For the record, Mrs. Hill, I'm  
 3 going to -- basically these documents are  
 4 production that we received from Fred Meyer in  
 5 July -- on July 14, 2006, and they consist of a  
 6 series of Bates stamped documents with the Bates  
 7 Nos. 202414 to 202438.G.  
 8 Do you have those in front of you?  
 9 **A. I do.**  
 10 Q. Okay. Are these the documents that you mentioned  
 11 earlier today that you had looked at before coming  
 12 to your deposition?  
 13 **A. Yes.**  
 14 Q. Okay. Now, do you know the source of these  
 15 documents, where they came from?  
 16 **A. I would assume they came from a file that had been**  
 17 **put together with regard to a complaint received.**  
 18 Q. Okay. And can you tell me -- because we had never  
 19 seen these documents, were never provided them  
 20 until the middle of July, really actually after the  
 21 sort of close of formal discovery or the end of  
 22 formal discovery.  
 23 Can you tell me, if you know today, where that  
 24 file was?  
 25 MR. DICKENS: My object to the form of the

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1 question.  
 2 Go ahead.  
 3 Q. BY MR. CHOATE: Where the file was located that  
 4 contained this information?  
 5 **A. I would -- my guess is it was located out of the**  
 6 **region office in Seattle.**  
 7 Q. And why would it have been at the region office in  
 8 Seattle as opposed to either in Juneau or in  
 9 Portland?  
 10 **A. Because at the time that I conducted this**  
 11 **interview, my office was in Seattle.**  
 12 Q. All right. Now, at the conclusion of your last  
 13 deposition, did you direct anybody to the fact that  
 14 there might be additional materials in regards to  
 15 your investigation as to Mr. San Miguel in Seattle?  
 16 **A. No.**  
 17 Q. Okay. So when was the first time that you actually  
 18 saw these documents that -- beyond when you were  
 19 doing the investigation in 2003, when was the first  
 20 time you saw these documents that are Exhibit 1?  
 21 **A. Today.**  
 22 Q. All right. So you hadn't seen them before?  
 23 **A. Right.**  
 24 Q. All right. Now, having reviewed them, I assume  
 25 with your counsel and now as Exhibit 1, do you

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1 recognize them?  
 2 **A. Yes, I do.**  
 3 Q. Okay. And what do these documents represent?  
 4 **A. Copies of SYSM notes sent back and forth between**  
 5 **Johnna Havard and myself, and it looks like there**  
 6 **are some here that were referred to the store**  
 7 **director. Information that was requested as a**  
 8 **result of a complaint received from Johnna Havard.**  
 9 Q. Now, we'll sort of go through the documents in more  
 10 detail, but when you refer to the Office Visions  
 11 that you received from Johnna Havard, do you refer  
 12 to them collectively, meaning as a group, as being  
 13 a complaint or were there complaints, plural?  
 14 **A. I believe I received the initial complaint from**  
 15 **Johnna, and then I asked her to provide me with any**  
 16 **documentation that she may have, any notes**  
 17 **supporting the incidents that were at the heart of**  
 18 **her complaint.**  
 19 Q. And do you recall now when you first received a  
 20 complaint from Johnna Havard regarding Jaime San  
 21 Miguel?  
 22 **A. I don't remember right off the top of my head. I**  
 23 **would have to refer to -- I believe in reviewing**  
 24 **these that it was in 2002.**  
 25 Q. Maybe to assist you, I could -- the first date that

3 (Pages 60 to 63)

Beovich Walter Friend

Mary Hill

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- 1 the fall of 2002 would have been Dennis Affleck?
- 2 **A. Correct.**
- 3 Q. And then would you have been the person at HR to
- 4 deal with issues like this?
- 5 **A. Correct.**
- 6 Q. Now, Ms. Havard's Office Vision at the bottom of
- 7 this page 202437 talks about her doing ten- or
- 8 12-hour shifts but not receiving any training,
- 9 being yelled at if she comes in and writes a tour,
- 10 that her manager doesn't show up or shows up late,
- 11 and she's generally complaining.
- 12 I take it these are the sorts of complaints
- 13 that you've probably seen over -- during your
- 14 career working for Fred Meyer?
- 15 **A. That's correct.**
- 16 Q. What is the normal practice when you receive
- 17 something like this? What would you normally do?
- 18 **A. I would investigate it.**
- 19 Q. Okay. Well, when you got a copy of this Office
- 20 Vision from Mr. Hill, were you guys engaged at that
- 21 time or dating or did you have a personal
- 22 relationship or was it all professional in '02?
- 23 **A. In '02, we were living together.**
- 24 Q. Okay. So a personal relationship?
- 25 **A. Yes.**

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- 1 Q. When you got this Office Vision, did you initiate
- 2 any investigation in October of '02?
- 3 **A. Yes, I did.**
- 4 Q. Okay. What did you start doing?
- 5 **A. Well, as I recall, one of the things I did ask**
- 6 **Johnna to do was to provide me with specifics with**
- 7 **regard to her complaint, and also I recall that I**
- 8 **was dealing with or talking with the store director**
- 9 **on a pretty regular basis with regard to issues in**
- 10 **his store and asking him to talk to Mr. San Miguel**
- 11 **to find out, you know, if Johnna was in fact being**
- 12 **trained and what the issues were with her schedule.**
- 13 Q. Now, those communications, those would have been in
- 14 October of 2002?
- 15 **A. Ongoing. Yes.**
- 16 Q. Okay. And they would have been with the store
- 17 manager?
- 18 **A. That's correct.**
- 19 Q. Was it your normal practice to memorialize, meaning
- 20 write down, those communications in some fashion?
- 21 **A. Not every phone call. No. And I typically would**
- 22 **keep -- would have started a file, and any notes**
- 23 **that I would have taken with regard to the issue**
- 24 **would have gone into the file, an investigation**
- 25 **file.**

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- 1 Q. Okay. Now, looking at the materials that were
- 2 provided to us by Fred Meyer, do you see any notes
- 3 of any communications that you had with Mr. Sayre
- 4 at any time regarding the investigation into
- 5 Ms. Havard's complaints about Mr. San Miguel?
- 6 **A. I don't.**
- 7 Q. Would you have normally kept or written some formal
- 8 notes in regard to those conversations?
- 9 **A. Yes.**
- 10 Q. Do you know where those are?
- 11 **A. I don't.**
- 12 Q. Do you have any recollection today of specifically
- 13 talking to Mr. Sayre about Mr. San Miguel and
- 14 Ms. Havard's complaints?
- 15 **A. Yes.**
- 16 Q. Okay. Do you recall how many conversations you had
- 17 with Mr. Sayre?
- 18 **A. I don't.**
- 19 Q. Would it have been more than one?
- 20 **A. Yes, it would have.**
- 21 Q. Would it have been more than five?
- 22 **A. It depends on what time frame you are talking**
- 23 **about.**
- 24 Q. What about from October of 2002 through January or
- 25 February of 2003?

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- 1 **A. No. It wouldn't have been as many as five**
- 2 **probably.**
- 3 Q. Okay. What would have been your purpose in talking
- 4 to the store director?
- 5 **A. To find out if he was aware of the issues in his**
- 6 **store and what he knew about them and if things**
- 7 **were being monitored in apparel, if there were**
- 8 **issues, and that sort of thing.**
- 9 Q. Okay. And based upon the communications -- do you
- 10 recall if any of those communications with
- 11 Mr. Sayre would have been through Office Vision?
- 12 **A. I recall that at one time we had a conversation, we**
- 13 **meaning the regional vice-president and myself,**
- 14 **with Mr. Sayre about handling issues in his store**
- 15 **and addressing issues in his store, and if I**
- 16 **recall, part of the counseling that we gave**
- 17 **Mr. Sayre was that he needed to stay in**
- 18 **communication with myself regarding how he was**
- 19 **addressing ongoing issues.**
- 20 Q. Okay. I'm a little confused then in terms of what
- 21 did you mean by that? First of all, who was the
- 22 regional vice-president at that time?
- 23 **A. Well, it changed. It went from John Santos to I**
- 24 **believe Greg Sandeno and then Ken Haverkost.**
- 25 Q. Do you recall who was the regional director when

5 (Pages 68 to 71)

Beovich Walter Friend



Mary Hill

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- 1 you had this communication with Mr. Sayre?
- 2 **A. I believe it was John Santos initially.**
- 3 Q. And was this a face-to-face meeting or something
- 4 over the telephone?
- 5 **A. We had gone up and met with Fred face to face, Fred**
- 6 **Sayre.**
- 7 Q. And what was the -- do you recall approximately
- 8 when that was, that meeting?
- 9 **A. I don't. I'm sorry.**
- 10 Q. Do you recall if it was in the fall of 2002 or
- 11 after Christmas?
- 12 **A. I really don't remember --**
- 13 Q. When you --
- 14 **A. -- when we made the trip there.**
- 15 Q. I'm sorry. I apologize for talking over you.
- 16 When you made this trip to visit the Juneau
- 17 store, what was the purpose for the trip?
- 18 **A. Because of problems with Fred not addressing issues**
- 19 **in his store, we went up to sit down and have a**
- 20 **conversation with him about that.**
- 21 Q. Now, did you -- when you -- had you reached the
- 22 conclusion that there were problems with Fred not
- 23 addressing problems in his store, that Fred was not
- 24 doing his job?
- 25 **A. We sat down with him to discuss that part of his**

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- 1 **job was to address issues as they arose. And --**
- 2 Q. And when you -- you described that as a counseling
- 3 session?
- 4 **A. Yes.**
- 5 Q. Okay. Did you believe at that time that his work
- 6 performance was deficient in that regard?
- 7 **A. Yes.**
- 8 Q. And what was the basis for your conclusions or your
- 9 conclusion that his work performance was deficient?
- 10 **A. Because as issues arose in the store, they were not**
- 11 **addressed by Fred.**
- 12 Q. Okay. And what issues do you mean, to the best of
- 13 your recollection?
- 14 **A. There was -- to the best of my recollection, there**
- 15 **were issues in a number of different departments of**
- 16 **the store and that one of them was in apparel.**
- 17 Q. Was the issue in apparel solely complaints by
- 18 Ms. Havard or were there other complaints?
- 19 **A. No. Johnna Havard's complaint was the one that we**
- 20 **were dealing with in apparel.**
- 21 Q. In terms of responding to her complaint, did you
- 22 treat her complaint as being only about Mr. San
- 23 Miguel's tardiness or attendance or was it wider or
- 24 broader than that?

25 **A. Her complaint was wider and broader than just Jaime**

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- 1 **San Miguel's attendance.**
- 2 Q. And when you met with Mr. Sayre, was it for the
- 3 purpose of dealing with broader issues than just
- 4 Mr. San Miguel's attendance and tardiness?
- 5 **A. Yes.**
- 6 Q. What were the issues that you met with Mr. Sayre
- 7 about in regards to Mr. San Miguel?
- 8 **A. Complaints that he was not present when he said he**
- 9 **was going to be, that he was scheduled to arrive at**
- 10 **a certain time -- on the schedule to arrive at a**
- 11 **certain time and would consistently arrive later**
- 12 **than that, and then there were complaints about his**
- 13 **failure to communicate to his people.**
- 14 Q. And did you investigate those complaints?
- 15 **A. Yes.**
- 16 Q. Okay. And was that investigation one of your job
- 17 duties at Fred Meyer?
- 18 **A. Yes.**
- 19 Q. Okay. And as a result of that investigation, did
- 20 you reach some conclusions as to whether those
- 21 complaints were valid?
- 22 **A. Yes.**
- 23 Q. Okay. What -- and with as much detail as possible,
- 24 can you -- let's -- first of all, just in general
- 25 describe to me your conclusion, and we'll go

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- 1 through what your investigation entailed.
- 2 **A. Well, the conclusions based on my conversations**
- 3 **with a number of people in that department were**
- 4 **that Jaime was not working like he was scheduled to**
- 5 **work, that he was coming in late on a pretty**
- 6 **regular basis, and that there was a lot of**
- 7 **confusion as to who was supposed to do what with**
- 8 **regard to assignment of duties.**
- 9 Q. Okay. And what was the -- why was there confusion?
- 10 What did your investigation determine in that
- 11 regard?
- 12 **A. Well, the main complaint from the people that I**
- 13 **spoke with that worked for him was that there was**
- 14 **either no direction or a change of direction after**
- 15 **direction was initially given and that he was**
- 16 **missing from work on a pretty regular basis.**
- 17 Q. Were there complaints about Mr. San Miguel -- any
- 18 complaints of him kicking objects or kind of
- 19 physically acting out?
- 20 **A. My notes show that one of the people that I spoke**
- 21 **with said that he -- they knew him to have a temper**
- 22 **problem and that they cited a time in I think the**
- 23 **warehouse or the freight -- where the freight was**
- 24 **that they had witnessed him kick a box of freight.**
- 25 Q. Now, in regards to these complaints, are they the

6 (Pages 72 to 75)

Beovich Walter Friend

Mary Hill

October 25, 2006

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1 normal sort of complaints that would have supposed  
2 to have gone to the store director?  
3 **A. Yes.**  
4 Q. Okay. And did you in your investigation find that  
5 this information had gone to the store director but  
6 Mr. Sayre had not acted upon or not responded to  
7 the complaints?  
8 **A. Either he had not responded to the complaint or had**  
9 **not followed up on addressing the complaints with**  
10 **Jaime.**  
11 Q. Okay. Now, did you ask Mr. Sayre what he had done  
12 in regards to these complaints?  
13 **A. Yes.**  
14 Q. Okay. And what did he tell you?  
15 **A. He indicated that he had addressed some of the**  
16 **issues with Jaime, but clearly from what the**  
17 **investigation showed was that, even if he had**  
18 **talked to him about it, it hadn't done any good.**  
19 **Jaime hadn't improved his attendance at all.**  
20 **So it was a matter of not using the progressive**  
21 **discipline process to address an attendance issue**  
22 **with a manager.**  
23 Q. Did you talk to Mr. San Miguel directly about these  
24 complaints?  
25 **A. Yes.**

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1 **A. Yes, he did.**  
2 Q. Okay. Did he admit to you that he did not  
3 communicate well with his staff during this time  
4 period?  
5 **A. He admitted not to calling in when he was not going**  
6 **to come in. As far as his communication to his**  
7 **people, he didn't agree with that part of it as**  
8 **much. As I recall, he didn't admit to not**  
9 **communicating as well as he should have.**  
10 Q. Okay. Did you find in your investigation that he  
11 wasn't communicating as he should have?  
12 **A. The absence of written tours on a regular basis was**  
13 **an indicator that he wasn't communicating well to**  
14 **his people.**  
15 Q. Okay. Was there also complaints that Ms. Havard  
16 when Mr. San Miguel would not show up for work  
17 would prepare a tour and then Mr. San Miguel when  
18 he came in late would then tear up her tour? Do  
19 you recall those complaints?  
20 **A. Yes.**  
21 Q. Did you find that there was support for that, that  
22 that in fact occurred?  
23 **A. No.**  
24 Q. Did you investigate that?  
25 **A. Yes.**

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1 Q. Okay. And what was his response in as much detail  
2 as you recall?  
3 **A. As I recall, he was having some personal problems**  
4 **at home. He had a young son. He had gone through**  
5 **a divorce and had to take his son to daycare on a**  
6 **regular basis which interfered with his ability to**  
7 **come to work at the time that he was scheduled.**  
8 **Had gone through -- was having some personal issues**  
9 **at home, and it was interfering with his job.**  
10 Q. And do you -- at that time did he tell you when he  
11 had actually gone through the divorce or been  
12 separated?  
13 **A. I don't recall how long it had been, but to my**  
14 **recollection, it was still an issue for him.**  
15 Q. Did he admit to you that the complaints were valid,  
16 that there was substance for the complaints?  
17 MR. DICKENS: I'm going to object. That's  
18 overly broad as to which complaints you mean.  
19 Go ahead.  
20 Q. BY MR. CHOATE: We'll break them down. Did he  
21 admit to you that he was frequently tardy?  
22 **A. Yes, he did.**  
23 Q. Did he admit to you that when he was tardy he would  
24 fail to call in to advise his staff that he was  
25 going to be late?

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1 Q. Okay. What was your conclusion in that regard?  
2 **A. I -- there was no -- I had no proof, no witnesses**  
3 **to Mr. San Miguel tearing up tours.**  
4 Q. Were there complaints regarding employee --  
5 inconsistencies in employee discipline by Mr. San  
6 Miguel?  
7 **A. You know, that part of it I don't recall as being**  
8 **that big of an issue.**  
9 Q. Okay. If you could turn to 202 -- Bates  
10 No. 202417.  
11 **A. Okay.**  
12 Q. Can you tell me whose handwriting this is?  
13 **A. That's mine.**  
14 Q. Okay. Real quickly, if we're looking at 202417,  
15 418, 419, and then 420, 421, 422, 423, 424, 425,  
16 426, 427, 428, 429, 430, 431, that Bates set, are  
17 those all your handwritten notes?  
18 **A. Yes.**  
19 Q. Are they all part of the investigation you  
20 conducted?  
21 **A. Yes.**  
22 Q. Okay. Did you meet with Mr. Sayre before these  
23 notes were taken or after, if you recall?  
24 **A. I don't recall. I really don't.**  
25 Q. Let me just ask also. There is a page of

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1 MR. CHOATE: Let me rephrase that question. I  
2 think that's a good objection.  
3 Q. BY MR. CHOATE: If a salaried employee is scheduled  
4 to come to work at seven in the morning and doesn't  
5 show and hasn't called in, what is the policy at  
6 Fred Meyer for dealing with the fact that the  
7 employee did not show and did not call in?  
8 **A. Well, the policy is that you attempt to make --**  
9 **whether you are hourly or salaried, you make an**  
10 **attempt to contact the person to find out where**  
11 **they are. If you are speaking to what the**  
12 **discipline is for --**  
13 Q. Yes. Why don't you tell me, what's the discipline  
14 for that?  
15 **A. If it's determined that there are no extenuating**  
16 **circumstances and they just plain chose not to come**  
17 **to work, typically you would for what they refer to**  
18 **as a no call/no show, for the first offense, it's a**  
19 **written warning. If it happens again, that's a**  
20 **termination offense.**  
21 Q. Okay. Now, what if the employee shows up two hours  
22 late? What is the discipline?  
23 **A. That's an attendance issue. You start with**  
24 **counseling, and if it continues, then you move to**  
25 **the next step of discipline, which would typically**

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1 **be a written warning.**  
2 **You just go through the discipline process with**  
3 **the hopes that the attendance issues will correct**  
4 **themselves.**  
5 Q. So if an employee is routinely tardy, and I'm  
6 speaking generically, whether it's a management  
7 employee or an hourly employee, then if they  
8 routinely came in two hours late, that would be  
9 considered to be a counseling -- initially a  
10 counseling issue, and then if it continued,  
11 discipline would ramp up?  
12 **A. That's correct.**  
13 Q. Who was responsible at the Juneau store in 2002 and  
14 2003 to determine whether managers were working  
15 during the hours that they were scheduled to work?  
16 **A. That would be the store director.**  
17 Q. And how does the store director know whether a  
18 manager is working their shift?  
19 **A. Typically they're there or they get feedback from**  
20 **other members of the management team.**  
21 Q. Now, during -- are managers expected to clock in  
22 when they come to work?  
23 **A. No.**  
24 Q. Are they expected to clock in at all during their  
25 shift?

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1 **A. I believe that they are asked to clock in once**  
2 **during the week, and that's for a time and**  
3 **attendance requirement.**  
4 Q. Okay. Otherwise, there would be no way for the  
5 store director to know whether a manager is showing  
6 up for their shift other than the store director  
7 following up on that, observing it?  
8 **A. Correct.**  
9 Q. If a manager -- managerial employee decides to  
10 leave early on the shift, is that also an  
11 attendance issue if they leave without giving  
12 notice?  
13 **A. Yes.**  
14 Q. Again, would be responded to by a series of  
15 progressive discipline?  
16 **A. Correct.**  
17 Q. Now, if a managerial employee leaves a job because  
18 of a personal issue, whether it's a medical problem  
19 or it's a kid daycare issue or some other reason,  
20 without explanation, would that normally be  
21 something which would be treated as an attendance  
22 problem with counseling being the first step in  
23 discipline?  
24 **A. That's correct.**  
25 Q. Did you determine in your investigation whether

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1 Mr. Sayre had ever counseled Mr. San Miguel  
2 regarding his attendance issues that Ms. Havard  
3 complained of?  
4 **A. As I recall, he had sat down and talked with Jaime**  
5 **San Miguel about attendance issues. Yes.**  
6 Q. Do you know how -- whether he had talked about them  
7 more than one time?  
8 **A. I don't recall that.**  
9 Q. I take it there was nothing in writing from  
10 Mr. Sayre to Mr. San Miguel concerning his  
11 attendance?  
12 **A. I don't believe there was.**  
13 Q. Okay. Similarly, based upon the documents we've  
14 been given, there is -- your investigation didn't  
15 find any writings from Mr. Sayre to Mr. San Miguel  
16 regarding any of the other issues that Ms. Havard  
17 complained about?  
18 **A. If there were any written warnings or written**  
19 **verbal warnings, they would have been in Jaime San**  
20 **Miguel's file.**  
21 Q. And there weren't any, were there?  
22 **A. I don't recall, sir.**  
23 Q. Okay. Now, in regards to the step discipline  
24 process that you've referenced, what is that  
25 process that would apply to a manager -- would the

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- 1 **A. As I recall, he was given a last and final warning.**  
 2 Q. Okay. In your -- okay. If you could, then,  
 3 explain to me where a last and final warning fits  
 4 within the progressive discipline system you just  
 5 discussed.  
 6 **A. It's a written warning that says "last and final"**  
 7 **at the top, and that means that we're not -- we**  
 8 **won't do any more written warnings, we won't do any**  
 9 **other discipline, that when you are given a last**  
 10 **and final warning, if you violate the rule again,**  
 11 **you can expect to be discharged.**  
 12 Q. Now, in giving a last and final warning, had you  
 13 concluded that Mr. San Miguel had already been  
 14 given the series of progressive discipline steps  
 15 before then, before that, or did you jump to that  
 16 step?  
 17 **A. We jumped to that step based on the fact that he**  
 18 **had been counseled by the store director. But due**  
 19 **to the fact he was department manager and we had**  
 20 **found that it was a pretty serious attendance**  
 21 **issue, we decided that he deserved to receive a**  
 22 **last and final warning, and that he understood that**  
 23 **he could not continue to miss time as he had**  
 24 **previously.**  
 25 Q. And the form that would have had the last and final

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- 1 warning, it would say "last and final," like  
 2 handwritten at the top of the written warning form?  
 3 **A. That's correct.**  
 4 Q. Okay. And do you recall issuing that?  
 5 **A. Yes.**  
 6 Q. And who would have signed off on that?  
 7 **A. It would have been the regional vice-president and**  
 8 **myself and Mr. San Miguel. And probably Fred as**  
 9 **well.**  
 10 Q. Now, in that same process or trip, did you reach  
 11 certain conclusions regarding Mr. Sayre's  
 12 management practices that resulted in some form of  
 13 discipline for Mr. Sayre?  
 14 **A. You know, I don't recall if we disciplined**  
 15 **Mr. Sayre that trip.**  
 16 Q. Did you discipline him at some other point?  
 17 **A. I believe we did.**  
 18 Q. And what -- if you recall, what was the discipline  
 19 for?  
 20 **A. For failing to address issues in his store.**  
 21 Q. Including the one with Mr. San Miguel?  
 22 **A. That's correct.**  
 23 Q. Okay. Do you recall -- you've identified all of  
 24 the handwritten documents as being in your own  
 25 handwriting that are part of this Exhibit

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- 1 Could you just briefly go through the OV's that  
 2 are part of this set which are in Exhibit 1 and  
 3 confirm that these are the type of documents that  
 4 would have been kept in your investigative file.  
 5 Many of them are sort of from Johnna Havard to  
 6 herself and then appear to have been forwarded to  
 7 you.  
 8 **A. (Witness complies.)**  
 9 **These are all the Office Visions that pertain**  
 10 **to the Johnna Havard complaint. They would have**  
 11 **all been in the same file.**  
 12 Q. Okay. And they would have been kept in the regular  
 13 course of business?  
 14 **A. That's correct.**  
 15 Q. Would you have kept in that same file any  
 16 communications with Mr. Sayre regarding this that  
 17 would have been in writing?  
 18 **A. Yes.**  
 19 Q. So if they're not there -- as you recall -- strike  
 20 that.  
 21 As you recall, there were at least some  
 22 communications to Mr. Sayre in this regard that  
 23 were in writing?  
 24 **A. I would assume so.**  
 25 Q. Now, as a result of your investigation, at some

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- 1 point in time Mr. Sayre was also disciplined for,  
 2 in part, failing to address the complaints  
 3 regarding Mr. San Miguel; is that right?  
 4 **A. That's correct.**  
 5 Q. And do you recall what discipline was given to  
 6 Mr. Sayre?  
 7 **A. I don't. As I recall, he was given a warning**  
 8 **notice for failing to address issues in his store.**  
 9 **I really can't speak to anything else.**  
 10 Q. And was it your understanding when that notice --  
 11 did you give him that warning notice?  
 12 **A. I don't believe I did. I believe the RVP did, the**  
 13 **regional -- the RVS, the regional vice-president**  
 14 **did.**  
 15 Q. Do you know who that was at the time?  
 16 **A. I believe it was either John Santos or Greg**  
 17 **Sandeno.**  
 18 Q. Do you know -- that would have been, in terms of  
 19 your progressive disciplinary process, the stage  
 20 after counseling and before suspension?  
 21 **A. That's correct.**  
 22 Q. And part of that written warning was for  
 23 Mr. Sayre's failure to address complaints about  
 24 Mr. San Miguel?  
 25 **A. That's correct.**

11 (Pages 92 to 95)

Mary Hill

October 25, 2006

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1 conversations or in-person meetings with Fred Sayre  
 2 regarding either Jaime San Miguel or Myrna Johnson?  
 3 **A. Would you say that again, please.**  
 4 Q. Sure. In fact, let me rephrase the question.  
 5 At this time do you have any independent  
 6 recollection that you did make notes of any  
 7 conversations either on the phone or in person with  
 8 Fred Sayre regarding Jaime San Miguel and the  
 9 complaints by Johnna Havard?  
 10 **A. You mean do I have recollection of specific**  
 11 **conversations?**  
 12 Q. No. Do you have recollection of specifically  
 13 making any notes of any discussions?  
 14 **A. No.**  
 15 Q. Would you look at Exhibit 1, document stamped  
 16 No. 202418.  
 17 **A. Okay.**  
 18 Q. For the record, those are handwritten notes. Whose  
 19 handwritten notes are those?  
 20 **A. Mine.**  
 21 Q. Can you tell us what those notes reflect.  
 22 **A. I believe that this is Jaime's response to the --**  
 23 **what was going on with Johnna Havard and issues he**  
 24 **was having with her.**  
 25 Q. Was this in response to the complaints from

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1 Ms. Havard?  
 2 **A. Yes.**  
 3 Q. And then documents stamped Nos. 202420 through  
 4 202431, are those simply some of your handwritten  
 5 notes based on interviews of different people at  
 6 the Juneau store?  
 7 **A. Yes.**  
 8 Q. Can you tell us at this time if those handwritten  
 9 notes were in person or over the telephone or based  
 10 on interviews?  
 11 **A. They were in person.**  
 12 Q. So you were at the Juneau store?  
 13 **A. Yes.**  
 14 Q. Now, during the time that you had responsibility  
 15 for the Juneau store as a human resources  
 16 representative for Fred Meyer, that would have  
 17 covered 2001, 2002 and part of 2003?  
 18 **A. Correct.**  
 19 Q. And for the salaried employees in the Juneau store  
 20 during that time frame, what was their employment  
 21 status?  
 22 **A. They were at-will.**  
 23 Q. And what do you understand employment at-will to  
 24 be?  
 25 **MR. CHOATE: I'm going to object to your**

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1 question as going outside the course -- outside of  
 2 my direct examination.  
 3 **MR. DICKENS:** Well, Counsel, I don't think  
 4 given what you raised that they do.  
 5 Go ahead, please.  
 6 **MR. CHOATE:** That's fine.  
 7 **A. What I understand at-will to mean is that the**  
 8 **employer reserves the right to terminate at any**  
 9 **time as well as the associate reserves the right to**  
 10 **quit at any time.**  
 11 Q. **BY MR. DICKENS:** Now, you had a lot of questions by  
 12 counsel with regard to progressive discipline  
 13 steps. From your experience at Fred Meyer, were  
 14 all those steps required to terminate a salaried  
 15 employee at the Juneau store in 2001, 2002 or 2003?  
 16 **A. No.**  
 17 Q. Are you familiar with a document called a Fred  
 18 Meyer Employee Responsibilities form?  
 19 **A. Yes, I am.**  
 20 **MR. CHOATE:** Again, Jim, this is so far out, I  
 21 mean out of the scope of my questions for her. If  
 22 you want to open this all up, we can go a lot  
 23 longer.  
 24 But I'm going to object to you using her  
 25 deposition to bring in information either for trial

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1 testimony or something to deal with the summary  
 2 judgment. This is way outside of what I asked and  
 3 what the court set the limits on.  
 4 **MR. DICKENS:** It's not outside, and I'll  
 5 explain it to the court if we have to do that.  
 6 It's not at all.  
 7 **MR. CHOATE:** Sure.  
 8 Q. **BY MR. DICKENS:** Now, with regard to the Fred Meyer  
 9 employee responsibilities form, are there actions  
 10 that are set forth in that form that would be a  
 11 basis for immediate termination?  
 12 **A. Yes.**  
 13 Q. Now, you mentioned during direct examination a last  
 14 and final warning given to Mr. San Miguel. Can you  
 15 clarify the circumstances under which that would be  
 16 given to a salaried employee.  
 17 **A. If we determine that -- when we do an investigation**  
 18 **and we determine that the actions or behavior of**  
 19 **the salaried associate is such that -- we hold them**  
 20 **to a higher standard than we do the people that**  
 21 **they supervise simply because their job is to be**  
 22 **the role model for adherence to the policy.**  
 23 **So if we through the course of an investigation**  
 24 **determine that they have violated a rule, rather**  
 25 **than go through a suspension or something like**

13 (Pages 100 to 103)

Beovich Walter Friend